

MAGISTRATE JUDGE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NICHOLAS HOGAN,

Defendant.

Case No.: CR16-0154 JCC

DEFENSE SUPPLEMENTAL MOTION
AND AFFIDAVIT FOR ORDER
MODIFYING CONDITIONS OF RELEASE

COMES NOW the defendant, Nicholas Hogan, by and through his attorney, Wayne C. Fricke, Hester Law Group, Inc., P.S., for an Order modifying the firearms prohibition in his conditions of release.

This motion is based on the attached affidavit filed in support.

RESPECTFULLY SUBMITTED this 7 day of July, 2016.

HESTER LAW GROUP, INC., P.S.
Attorneys for Defendant

By: 
Wayne C. Fricke, WSB #16550

1 STATE OF WASHINGTON)

: ss.

2 County of Pierce)

3 WAYNE C. FRICKE being first duly sworn under oath deposes and says that I am the
4 attorney for Nicholas Hogan in the above-entitled matter.

5 The court granted Mr. Hogan's request that he be allowed to carry a firearm while
6 working as his employment as a police officer, subject to the approval of the United States
7 Attorney pursuant to section 925(c) of Title 18. This request was granted after the parties
8 referred the court to this provision and stated that it was applicable to Mr. Hogan's situation.

9 Subsequent to the court hearing, the government contacted counsel and indicated that
10 our interpretation of the statute omitted the exception contained within 18 USC Section
11 925(a)(1). That section makes an exception for law enforcement officers, which was
12 confirmed by the ATF regional counsel. Thus, based on a correct interpretation of the
13 governing provisions, it has been determined that under 18 USC Section 925(a)(1), an officer
14 is not precluded from possessing a service weapon to carry out his official duties. The statute
15 reads in pertinent part:


16 "The provisions of this chapter. . . shall not apply with respect to the . . . possession . . .
17 of any firearm or ammunition . . . issued for the use of, the United States or any
18 department or agency thereof or any State or any department, agency, or political
19 subdivision thereof."
20

21 This provision allows Nicholas Hogan to lawfully possess a firearm while on duty, but
22 does not allow him to possess a personal weapon; Nor does he need to follow 18 USC Section
23 925(c) in seeking a waiver.

24 As Mr. Hogan is not legally precluded from possessing a firearm, the defendant would
25 request that the Court modify the firearms provision of his conditions of release to read as
26
27

1 follows: "You are prohibited from possessing or having access to firearms or dangerous
2 weapons except for possession of a service firearm provided by the City of Snoqualmie or any
3 other law enforcement agency to be used while on duty as a law enforcement officer only."

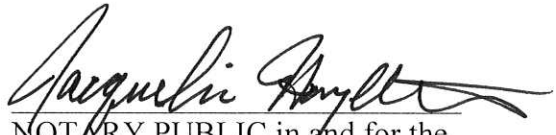
4 FURTHER YOUR AFFIANT SAYETH NAUGHT.
5

6 
7 Wayne C. Fricke, WSB #16550

8 SUBSCRIBED AND SWORN to before me this 7th day of July,
9 2016.



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NOTARY PUBLIC in and for the
State of Washington. Residing at
Tacoma. My Commission Tacoma
Expires: 3/4/2020.

CERTIFICATE OF SERVICE

I hereby certify that on July 7th, 2016, I electronically filed the foregoing Supplemental Defense Motion and Affidavit for Order Modifying Conditions of Release with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Bruce F. Miyake
Assistant United States Attorney
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271

Rose E. Gibson
Trial Attorney / Criminal Section / Civil Rights Division
950 Pennsylvania Avenue NW
Washington, DC 20530

I hereby certify that on July 7th, 2016, I mailed Supplemental Defense Motion and Affidavit for Order Modifying Conditions of Release to the following:

Nick Hogan
13805 172nd Pl East
South Hill, WA 98374

DATED this 7th day of July, 2016.


Sarah H. Leighton